

## ORDINANCE NO. 929-06

AN ORDINANCE PROHIBITING SMOKING  
IN WORKPLACES AND PUBLIC PLACES**Sec. 1000. Title**

This Article shall be known as the City of Foley Smokefree Air Act of 2006.

**Sec. 1001. Findings and Intent**

The City Council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death. (Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting, California Air Resources Board (ARB), September 12, 2005.)

There is no safe level of exposure to secondhand smoke, (Environmental Protection Agency (EPA), "Respiratory health effects of passive smoking: lung cancer and other disorders, the report of the U.S. Environmental Protection Agency. Smoking and Tobacco Control Monograph 4," Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI); Environmental Protection Agency (EPA), August 1993; California Environmental Protection Agency, "Health Effects of Exposure to Environmental Tobacco Smoke," 1997; California Air Resources Board, "Proposed identification of environmental tobacco smoke as a toxic air contaminant," Sacramento: California Environmental Protection Agency (Cal-EPA), Air Resources Board, Stationary Source Division, Air Quality Measures Branch, Office of Environmental Health Hazard Assessment (OEHH), September 29, 2005.)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.;



Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986.)

The U. S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)

Give the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coltas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)*, 2005.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

The Society of Actuaries has determined that secondhand smoke costs the U. S. Economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure, and \$4.6 billion in lost productivity. (Behan, D.F.; Briksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after



enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Hundreds of Communities in the U. S., plus numerous states, including California, Delaware, Florida, Massachusetts, Montana, New Jersey, New York, and Washington, have enacted laws requiring workplaces, restaurants, bars, and other public places to be smokefree, as have numerous countries, including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda, and Uruguay.

There is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the City Council finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

## **Sec. 1002. Definitions**

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

1. "Bar" means a stand-alone enclosed area in which the principal or sole purpose and business of the establishment is the serving of alcoholic beverages for consumption by guests on the premises. This term includes such establishments where the sale or service of food is made, but only if it is incidental to the service of alcoholic beverages. Bars must be posted off limits to minors and must not allow any minors inside.
2. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
3. "Employee" means a person who is hired by another to perform a task or job in consideration for direct or indirect monetary wages, gain or profit, and a person who volunteers his or her services for a non-profit entity. This term includes independent contractors.
4. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that hires the services

of one or more employees..

5. "Enclosed Area" means that area between a floor and ceiling that is enclosed, or is capable of being enclosed, on all sides by solid walls, windows, and/or doorways and which is climate controlled by a HVAC or similar air handling system.
6. "Place of Employment" means an area under the control of an Employer where Employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "Place of Employment" unless it is also used as a location of a business, child care, adult day care, or health care facility.
7. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. A "private club" is not open to the general public. A private club established for the purpose of avoiding the prohibitions on smoking called for in this Article shall be deemed a Public Place, however.
8. "Public Place" means an enclosed area to which the general public is invited or in which the general public is permitted, including but not limited to, banks, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A "private club" facility is a "public place" when being used for a function to which the general public is invited or allowed to attend. A private residence is not a "public place" unless it is used as a business location, child care, adult day care, or health care facility.
9. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
10. "Sports Arena" means sports pavilions, stadiums, ball fields, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

### **Sec. 1003. Application of Article to City-Owned Facilities**

All Enclosed Areas, including buildings and vehicles, which are owned, leased, or operated by the City of Foley shall be subject to the provisions of this Article.

### **Sec. 1004. Prohibition of Smoking in Enclosed Public Places**

Smoking shall be prohibited in all enclosed Public Places, as well as the areas within a reasonable distance outside of the main entrance(s) of such Public Places, within the City of Foley.

### **Sec. 1005. Prohibition of Smoking in Places of Employment**



Smoking shall be prohibited in all enclosed areas which are a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

#### **Sec. 1006. Prohibition of Smoking in Outdoor Arenas and Stadiums**

Smoking shall be prohibited in the seating areas of all outdoor sports arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

#### **Sec. 1007. Reasonable Distance**

Smoking shall be prohibited within a reasonable distance of 15 linear feet outside all main entrances/exits to enclosed areas where smoking is prohibited in this Article.

#### **Sec. 1008. Where Smoking Not Prohibited**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the prohibitions in this Article:

1. Private residences which are not also a place of employment, business or public place as defined herein.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
3. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
4. Private clubs when being used or occupied by its members only.
5. Places of employment that do not meet the definition of an Enclosed Area (except those covered by the provisions of Sections 1006 or 1007).
6. Bars.

#### **Sec. 1009. Declaration of Establishment as Nonsmoking**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1010(A) is posted.

#### **Sec. 1010. Posting of Signs**

1. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

2. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

#### **Sec. 1011. Nonretaliation; Nonwaiver of Rights**

1. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.
2. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

#### **Sec. 1012. Enforcement**

1. This Article shall be enforced by the City Clerk/Administrator or an authorized designee.
2. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Foley.
3. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Clerk/Administrator.
4. The Health Department, Police Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
5. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
6. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
7. In addition to the remedies provided by the provisions of this Section, the City Clerk/Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

#### **Sec. 1013. Violations and Penalties**

A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.



2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City Council by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

#### **Sec. 1014. Public Education**

The City Clerk/Administrator shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

#### **Sec. 1015. Governmental Agency Cooperation**

The City Clerk/Administrator shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, County, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

#### **Sec. 1016. Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

#### **Sec. 1017. Liberal Construction**

This Article shall be liberally construed so as to further its purposes.

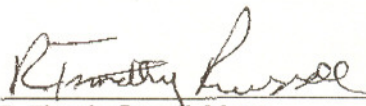
#### **Sec. 1018. Severability**

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

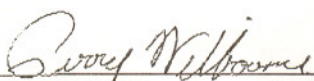
#### **Sec. 1019. Effective Date**


This Article shall be effective ninety (90) days from and after the date of its adoption and its publication as required by law.

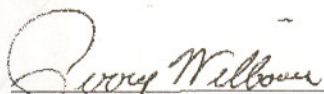
Passed, Adopted, and Approved this the 7th day of August, 2006.

  
R. Timothy Russel, Mayor

ATTEST:

  
A. Perry Wilbourne  
City Clerk/Administrator

 This ordinance was published in the *Foley Onlooker* on August 23, 2006  
August 12, 2006 and was  
posted at City Hall from August 7, 2006 to August 18, 2006

  
A. Perry Wilbourne  
City Clerk/Administrator

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